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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,392	06/20/2007	Klaus Worgull	3564	1516
278	7590	08/23/2010		
MICHAEL J. STRIKER 103 EAST NECK ROAD HUNTINGTON, NY 11743			EXAMINER HALL, COREY JOHN	
			ART UNIT 3743	PAPER NUMBER
			NOTIFICATION DATE 08/23/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

striker@strikerlaw.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/563,392

Applicant(s)

WORGULL ET AL.

Examiner

COREY HALL

Art Unit

3743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6 and 9-12.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/Kenneth B Rinehart/
Supervisory Patent Examiner, Art Unit 3743

/Corey Hall/
Examiner, Art Unit 3743

Continuation of 11, does NOT place the application in condition for allowance because: On page 4, lines 8-14 Applicant argues that the basis for objecting to claims 1 and 12 have been cured. This is persuasive and the objections to claims 1 and 12 have been withdrawn.

On page 5, lines 1-15 Applicant argues that Kaeriyama fails to disclose a cold air combination switch located between a first handle grip and a second handle grip because the cold air combination switch 28, 30 of Kaeriyama has the switch 28, 30 located in the handle 5 of the dryer. This is not persuasive because the claims do not exclude forming the cold air combination switch on either the handle or the barrel and Kaeriyama discloses the switch 28, 30 as being located between a first handle grip 5 and a second handle grip 4 as shown in figures 1 and 2. It is not unreasonable to interpret the switch as being on the handle or barrel portions when the portions between the first and second handle grips are formed by the handle and barrel portions.

On page 5, line 16-page 6, line 2 Applicant argues that figure 2 of Kaeriyama does not show the operation of a control element (thumbscrew) 30 or actuating switch 30 or 28 from a finger of a hand located on the barrel of the dryer and that moving the thumb from the position shown in figure 2 to contact thumbscrew 30 would require an anatomically impossible hyperextension of the thumb or releasing the grip on the barrel. This is not persuasive. First, Applicant's figures 5 and 6 demonstrate that the Applicant's invention requires the extension of the thumb in order to press the switch when the hand is located on the barrel. What might be an anatomically impossible hyperextension of the thumb for a child might be a simple flick of the thumb for a tall adult. Additionally, for some users of Applicant's invention to activate the switch, a releasing of the grip on the barrel may be required. With regard to Kaeriyama, it states that the switch 30 can be activated from anywhere in front of the handle while in figure 2 it shows a users hand gripping the barrel and therefore it discloses activating the switch from this position. Additionally, Applicant has not shown that it involves an anatomically impossible hyperextension of the thumb for any user to adjust the switch. While it might be difficult for a child, it would likely be a simple flick of the thumb for a tall adult to activate the switch of Kaeriyama. Finally, the claims do not exclude the possibility that a user might choose to adjust their grip to more easily adjust the switch and then adjust their grip back when continuing hair drying.

On page 6, line 3-page 7, line 5 Applicant argues that Montagnino fails to disclose the switch being located between grips because the switch 62 is located within the handle 16. This is not persuasive because the claims do not exclude forming the cold air combination switch on either the handle or the barrel and Montagnino discloses its switch 62 as being located between a first handle grip 16 and a second handle grip 14 as shown in figure 2.

On page 7, lines 6-20 Applicant argues that Montagnino fails to disclose a dryer having a grip on the barrel and it cannot therefore disclose a switch that is between first and second handle grips. This is not persuasive because, as cited in the Office action, Montagnino discloses in col. 1, lines 47-59 that it is common for users to "grasp" the barrel during drying but that the barrel gets uncomfortably hot and that the hair dryer of Montagnino overcomes this by having a flow guide that reduces the temperature of the barrel during use at col. 2, lines 22-27. Therefore, Montagnino does disclose the barrel as a grip with the switch 62 between the first 16 and second 14 handle grips.

On page 8, lines 10-24 Applicant broadly argues that none of the combinations of Kaeriyama with the other references cure deficiencies of Kaeriyama with regard to claim 1. This is not persuasive because Kaeriyama does disclose all the limitations of claim 1 and the specific issues raised by the Applicant have been addressed above.

On page 9, line 1-page 10, line 6 Applicant continues to argue that Kaeriyama fails to disclose a switch located between two handle grips and fails to teach or suggest that the switch is configured to be actuated by a finger on a hand on either of the two handle grips. This is not persuasive for the reasons stated above.

On page 10, lines 7-14 Applicant continues to argue that Montagnino does not disclose the limitations of claim 1. This is not persuasive for the reasons stated above.

Continuation of 13. Other: Applicant's amendment to claim 12 from "central warm-air conduit (28)" on line 5 to "hollow-cylindrical barrel (30)" on lines 5-6 is rejected under Montagnino using the hollow-cylindrical barrel 40 of figures 2-3 and under Kaeriyama in view of Berryman using the hollow-cylindrical barrel 66 of figure 3 of Berryman.